

Filed for intro on 02/22/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House No. HB1622  
By Turner

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following as a new chapter:

Section 62-\_-101. As used in this act unless the context otherwise requires:

(a) "Amusement attraction" means:

(1) an amusement ride; or

(2) a structure that gives amusement, excitement, pleasure, or thrills to people who move around, over, or through the structure without the aid of a moving device integral to the structure.

(b) "Amusement attraction" does not include a structure that is devoted principally to exhibitions related to agriculture, the arts, education, industry, religion, or science.

(c) "Amusement owner" means a person, the state of Tennessee, or a political subdivision of the state that owns an amusement attraction or, if the amusement attraction is leased, the lessee.

(d) "Amusement park" means an area that is used principally for one (1) or more permanently-erected amusement attractions.

(e) "Amusement ride" means a device that is intended to give amusement, excitement, pleasure, or thrills to passengers whom the device carries:

(1) along or around a fixed or restricted course; or

(2) within a defined area.

(f) "Carnival" means an itinerant enterprise that consists principally of one (1) or more temporarily located amusement attractions.

(g) "Commissioner" means the commissioner of labor.

(h) "Fair" means an enterprise that:

(1) is devoted principally to periodic exhibitions related to agriculture, the arts, education, industry, religion, or science; and

(2) has one (1) or more amusement attractions operated along with the exhibitions.

#### Section 62-\_-102.

(a) The general assembly finds that:

(1) an unsafe amusement attraction is likely to cause serious and preventable injuries to members of the public; and

(2) for the welfare of the people of the State, these injuries must be prevented and the public must be protected from unsafe amusement attractions.

(b) The purpose of this chapter is to ensure, as far as possible, the safety of the public in the use of amusement attractions at carnivals, fairs, and amusement parks in this state by providing for:

- (1) adoption of safety regulations;
- (2) an effective enforcement and compliance program; and
- (3) reporting procedures on the safety of amusement attractions

that:

(A) help to achieve the purpose of this chapter; and

(B) describe accurately the hazards of amusement attractions.

Section 62-\_\_-103.

(a) This chapter does not apply to a single-passenger, coin-activated amusement ride that is electrically, manually, or mechanically operated unless admission is charged for access to the place where the amusement ride is located.

(b) This chapter does not prevent the licensing of carnivals, fairs, or amusement attractions by the state or a political subdivision of the state.

(c) This chapter does not repeal or modify the "Occupational Safety and Health Act of 1972" codified as Tennessee Code Annotated, Title 50, Chapter 3.

Section 62-\_\_-104.

The purchase of a ticket to a carnival or amusement ride is not an assumption of risk by the buyer.

Section 62-\_\_-201. The commissioner shall administer and enforce this chapter.

Section 62-\_\_-202. The commissioner may delegate any power or duty of the commissioner under this chapter.

Section 62-\_\_-203.

(a) The commissioner may make an agreement with a municipality or other political subdivision of the state or unit of state government to delegate the power of inspection.

(b) If a political subdivision satisfies the commissioner that the political subdivision can make the inspections required under this chapter, the commissioner shall make an agreement with the political subdivision to delegate the power of inspection.

(c)(1) The commissioner may retain the right to monitor an inspection by a municipality or political subdivision of the state or unit of state government.

(2) The commissioner may revoke any such inspection agreement.

Section 62-\_-204.

(a) The commissioner may administer oaths, depose witnesses, and certify to official acts.

(b) The commissioner may issue subpoenas for the attendance of witnesses to testify or to produce evidence.

(c) In addition to any duties set forth elsewhere, the commissioner shall establish procedures necessary for reporting and keeping records to carry out the duties of the commissioner under this chapter.

Section 62-\_-205.

(a) Whenever an individual who is authorized to inspect property in this state under this chapter is denied access to the property after making a proper request for access of the owner, tenant, or other person in charge of the property, the individual may apply to the chancery court for an administrative search warrant.

(b) The application shall:

(1) state the nature, purpose, and scope of the inspection; and

(2) show that:

(A) the applicant:

- i. is authorized by law to make the inspection; and
- ii. made a proper request for access at a reasonable time;

(B) access was denied; and

(C) the inspection is for a purpose related to safety or health.

(c) An application may not be submitted to the chancery court unless approved by the attorney general and reporter.

(d) On application in accordance with this section, the chancery court may issue an administrative search warrant.

Section 62-\_\_-206.

(a) In general. A person who is adversely affected or aggrieved by an order passed or regulation adopted by the commissioner under this chapter may appeal to a court of competent jurisdiction in accordance with the Uniform Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5.

(b)(1) The filing of an appeal does not stay an order or regulation of the commissioner.

(2) However, after giving the commissioner notice and an opportunity for a hearing, the court in which the appeal is pending may stay an order or regulation of the commissioner on the conditions that the court considers proper.

(3) The conditions may include a requirement to post security.

(c) A court shall hear the appeal promptly.

(d) A regulation that the commissioner adopts under this chapter:

(1) is prima facie lawful and reasonable; and

(2) may not be held invalid because of a technical defect, if there is substantial compliance with this title.

Section 62-\_\_-207.

(a) The commissioner may bring an action in a court of competent jurisdiction to enforce an order passed or regulation adopted under this chapter.

(b) On request of the commissioner, the attorney general and reporter may proceed in a state or federal court or before any other federal unit to enforce a decision or order of the commissioner under this chapter.

(c) A court shall hear the action promptly.

(d) A regulation that the commissioner adopts under this chapter:

(1) is prima facie lawful and reasonable; and

(2) may not be held invalid because of a technical defect, if there is substantial compliance with this title.

Section 62-\_\_-301. In this part, "Board" means the State Amusement Ride Safety Advisory Board created by this part.

Section 62-\_\_-302. In addition to any duties set forth elsewhere, the commissioner shall adopt safety regulations for the maintenance and operation of amusement attractions.

Section 62-\_\_-303. There is created an Amusement Ride Safety Advisory Board.

Section 62-\_\_-304.

(a) The board shall consist of nine (9) members appointed by the governor.

(b) Of the nine (9) members of the board:

(1) One (1) shall be a mechanical engineer;

(2) One (1) shall represent owners of carnivals;

(3) One (1) shall represent the state fair and the county fairs;

(4) Two (2) shall represent owners of amusement parks; and

(5) Four (4) shall be consumer members.

(c) In choosing the members of the board, the governor shall make every effort to ensure that each region of the state is represented.

(d) Each consumer member of the Board shall be a member of the general public.

(e)

(1) The term of a member is four (4) years and begins on July 1 of each year.

(2) The terms of the board shall be staggered. To accomplish this, in making the initial appointments to the board, two (2) consumer members, one (1) amusement park owner, and the mechanical engineer shall be appointed for four (4) year terms. Two (2) consumer members, one (1) amusement park owner, the carnival owner and the representative from the state or county fairs shall be appointed for two (2) year terms

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(f) The governor may remove a member for incompetence or misconduct.

Section 62-\_-305. The governor shall appoint a chairman from among the consumer members of the board.

Section 62-\_-306.

(a) The board shall set the times and places of its hearings and meetings.

(b) Each member of the board is entitled to reimbursement for travel expenses for official board business in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general.

Section 62-\_\_-307. The board shall advise and consult with the commissioner on reasonable regulations to prevent conditions that are detrimental to the public in their use of amusement attractions.

Section 62-\_\_-308.

(a) The board shall recommend to the commissioner any regulation that it finds necessary for the protection and safety of the public.

(b) The commissioner may make recommendations to the board on regulations.

Section 62-\_\_-309.

(a) The board shall base its recommendations for regulations on information that:

(1) the commissioner develops or otherwise has available; or

(2) an interested person submits to the board at a public hearing under this section.

(b)

(1) The board shall hold such public hearings as are needed to carry out its responsibilities under this chapter.

(2) At least forty-five (45) days before a hearing, the commissioner shall publish notice of the hearing in the Tennessee Administrative Register.

Section 62-\_\_-310.



The board shall submit to the commissioner, with each recommendation for a regulation, a report that:

- (a) explains the need for the regulation; and
- (b) summarizes the information available to the board, including:
  - (1) testimony that was presented at any public hearing;
- and
- (2) technical information.

Section 62-\_-311. All regulations adopted by the commissioner shall be adopted in accordance with the Uniform Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5.

Section 62-\_-312.

- (a) The commissioner shall:
  - (1) compile a set of current regulations adopted under this chapter;
  - (2) keep a set of the regulations in the office of the commissioner;
- and
- (3) make a copy of the regulations for anyone who asks for one.
- (b) The commissioner may set a fee to cover the cost of making and mailing a copy of the current regulations.

Section 62-\_-313. The commissioner shall not have the authority to grant a variance from a regulation adopted pursuant to this chapter.

Section 62-\_-401.

- (a) An amusement attraction may not operate unless the amusement owner has purchased insurance for the amusement attraction in accordance with this part.

(b) Except for testing and inspection, an amusement attraction may not be operated unless the commissioner has issued a certificate of inspection for the amusement attraction.

Section 62-\_-402.

(a) The commissioner shall inspect:

- (1) each amusement attraction at an amusement park annually;
- (2) each amusement attraction, if moved, before it begins operation at another location; and
- (3) each new or modified amusement attraction before it begins public operation.

(b)

(1) An amusement owner shall notify the commissioner before operating an amusement attraction that is new, modified, or reconstructed.

(2) An owner or lessee of a carnival or fair shall:

- (A) notify the commissioner in writing at least thirty (30) days before opening the carnival or fair at each location; and
- (B) give the commissioner immediate notice of a change in the schedule of locations or dates if the schedule changes after notification.

(c) The commissioner shall issue to an amusement owner a certificate of inspection for each amusement attraction at a carnival, fair, or amusement park if:

- (1) after inspection the commissioner finds that the amusement attraction complies with this chapter and the regulations adopted under it; and

(2) the amusement owner submits to the commissioner a certificate of insurance for the amusement attraction as required by Section 62-\_\_-403 of this part.

(d)

(1) A certificate of inspection for an amusement attraction at an amusement park expires not more than one (1) year after the date of issuance.

(2) A certificate of inspection for an amusement attraction at a fair or carnival expires not more than thirty (30) days after the date of issuance.

(e) The certificate of inspection shall be posted in plain view on the amusement attraction.

(f) Upon receiving information or notification of an accident or complaint that involves an amusement attraction, the commissioner shall investigate the accident or complaint and inspect the amusement attraction.

Section 62-\_\_-403.

(a)

(1) An amusement owner shall obtain insurance against liability for injury to an individual that arises out of the use of an amusement attraction.

(2) The insurance shall be in the amount of at least:

(A) three hundred and fifty thousand dollars (\$350,000)

for an amusement ride that operates by mechanical means; or

(B) two hundred thousand dollars (\$200,000) for:

(i) an amusement ride that operates only by human power or gravity, including a water slide or water flume; or

(ii) any other amusement attraction.

(b) An amusement owner shall obtain insurance from an insurer or surety that is acceptable to the commissioner of commerce and insurance.

(c)

(1) A county where an amusement attraction is located may buy, on behalf of a not-for-profit organization, the amount of insurance required under this section for the amusement attraction.

(2) A county that merely buys insurance for an amusement owner is immune from liability as to liability arising from such amusement attraction.

Section 62-\_-404.

(a) Each amusement owner who operates an amusement attraction in this state shall:

(1) keep and make available to the commissioner records about the activities of the amusement owner under this chapter; and

(2) keep accurate records of, and submit periodic reports to the commissioner on, injuries to the public that occur during use of amusement attractions other than injuries that:

(A) are minor;

(B) require only first-aid treatment; and

(C) do not involve medical treatment or loss of consciousness.

(b) Whenever a death or serious physical injury results from the operation of an amusement attraction:

(1) the person who directly controls the operation of the amusement attraction immediately shall close the amusement attraction until it has been inspected by the commissioner;

(2) the amusement owner shall report the incident orally or in writing to the commissioner within twenty-four (24) hours; and

(3) the commissioner shall inspect the amusement attraction within twenty-four (24) hours after receiving notice of the incident.

Section 62-\_\_-405.

(a) The commissioner may prohibit use of an amusement attraction if, after an inspection or investigation, the commissioner finds that:

(1) the amusement attraction violates a regulation adopted under this chapter; and

(2) there is a substantial probability of death or serious physical injury from continued use of the amusement attraction.

(b) To prohibit use of an amusement attraction, the commissioner shall give an amusement owner written notice that prohibits use of the amusement attraction.

(c)

(1) The commissioner shall post a copy of the notice on the amusement attraction.

(2) Only the commissioner may remove the copy of the notice.

(d) The amusement attraction may not be operated until it is made safe for public use and each required safeguard is provided.

(e)

(1) A person who is aggrieved by a decision of the commissioner under this section may appeal to a court of competent jurisdiction in accordance with the Uniform

Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5.

(2)(A) The filing of an appeal does not stay the decision of the commissioner.

(B) However, after giving the commissioner notice and an opportunity for a hearing, the court in which the appeal is pending may stay the decision of the commissioner on conditions that the court considers proper.

(3) The conditions may include a requirement to post security.

Section 62-\_\_-406.

(a) As used in this section, "work day" means a day that is not a Saturday, a Sunday, or a state holiday.

(b) If, after an inspection or investigation, the commissioner finds that, within the immediately preceding six (6) months, an amusement owner has violated this chapter or an order passed or regulation adopted under this chapter, the commissioner promptly shall issue a citation to the amusement owner.

(c) Each citation shall:

(1) describe, in detail, the nature of the alleged violation;

(2) cite the provision of this chapter, order, or regulation that the amusement owner is alleged to have violated; and

(3) set a reasonable time for correction of the alleged violation.

(d) Within a reasonable time after issuance of a citation, the commissioner shall send by certified mail to the amusement owner a notice that:

(1) states the proposed civil penalty, if any, that the commissioner intends to impose under this chapter; and

(2) informs the amusement owner of the right to a hearing under this section.

(e) In accordance with any regulation that the commissioner adopts under this chapter, an amusement owner who receives a citation shall post the citation or a copy of it conspicuously at or near each place where the citation alleges that a violation occurred.

(f) Within fifteen (15) work days after an amusement owner receives a notice under subsection (d) of this section, the amusement owner may submit to the commissioner a written request for a hearing on the citation or proposed civil penalty.

(g) Unless an amusement owner requests a hearing as provided in this section, a citation and a notice of a proposed civil penalty are final orders.

(h) After an opportunity for a hearing under this section, the commissioner may adopt an order that affirms or modifies a requirement of a citation for correction of a violation if the amusement owner shows that the amusement owner:

(1) has made a good faith effort to comply with the requirement;

but

(2) has not complied because of a factor beyond the reasonable control of the amusement owner.

(i) An amusement owner shall correct each violation for which the commissioner issues a citation within the time set for correction in a final order under this part.

(j) If the commissioner has reason to believe that an amusement owner has failed to correct a violation in a timely manner, the commissioner shall send by certified mail to the amusement owner a notice that:

(1) states that the amusement owner has failed to correct the violation;

(2) states the proposed civil penalty, if any, that the commissioner intends to impose under this chapter for the failure; and

(3) informs the amusement owner that, within fifteen (15) work days after receipt of the notice, the amusement owner may submit to the commissioner a written request for a hearing on the failure to correct the violation or proposed civil penalty.

(k) Unless an amusement owner requests a hearing as provided in this section, the notice, including any proposed civil penalty, is a final order.

(l) Whenever the commissioner receives a request for a hearing made in accordance with this section, the commissioner shall hold a hearing in accordance with the Uniform Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5.

Section 62-\_\_-501.

(a) It is an offense for a person to knowingly make a false representation or false statement in an application, plan, record, report, or other document that the person submits or is required to keep under this chapter.

(b) A violation of this section is a Class A misdemeanor.

Section 62-\_\_-502

(a) It is an offense for an amusement owner to knowingly violate this chapter or an order passed or regulation adopted under this chapter if a member of the public dies as a result of such violation.

(1) The first violation of this section is a Class B misdemeanor.

(2) A second or subsequent violation of this section is a Class A misdemeanor.



Section 62-\_\_-503.

(a) The commissioner shall impose a civil penalty for a violation of this chapter only:

(1) in accordance with this section; and

(2) after issuing a citation under Section 62-\_\_-406 of this chapter for the violation.

(b) The commissioner may impose a civil penalty, not exceeding five hundred dollars (\$500) for each violation, against an amusement owner who:

(1) violates this chapter or an order passed or regulation adopted under this chapter, if the commissioner finds that the violation is not serious; or

(2) violates a requirement for posting imposed under this chapter.

(c) The commissioner may impose a civil penalty, not exceeding five hundred dollars (\$500) for each day a violation continues, against an amusement owner who fails to correct the violation in the time set for its correction.

(d) The commissioner may impose a civil penalty, not exceeding one thousand dollars (\$1,000) for each violation, against an amusement owner who violates this chapter or an order passed or regulation adopted under this chapter if a substantial probability of death or serious bodily injury exists because of the violation, unless the amusement owner did not know and with reasonable diligence could not have known of the violation.

(e) The commissioner may impose a civil penalty, not exceeding two thousand dollars (\$2,000) for each violation, against a person who:

(1) operates an amusement attraction without a certificate of inspection from the commissioner; or

(2) knowingly violates this chapter or an order passed or regulation adopted under this chapter.

(f) Before the commissioner imposes a civil penalty, the commissioner shall consider the appropriateness of the penalty in relation to:

(1) the size of the business of the amusement owner against whom the penalty is to be imposed;

(2) the gravity of the violation for which the penalty is to be imposed;

(3) the good faith of the amusement owner; and

(4) any previous violations by the amusement owner.

(g) Each civil penalty shall be paid into the general fund of the state.

Section 62\_-504. This chapter shall be known and may be cited as the "Amusement Rides and Attractions Safety Act of 1995".

SECTION 2. Tennessee Code Annotated, Section 4-29-221, is amended by adding the following new subpart to subsection (a);

( ) Amusement Ride Safety Advisory Board created by §62\_-304.

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 38, is amended by deleting the chapter in its entirety.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For the purpose of promulgating rules, appointing the advisory board and other administrative functions necessary to effectuate the purposes of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For purpose of inspecting amusement attractions, this act shall take effect on January 1, 1996.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.

AN ACT to enact the "Amusement Rides and Attractions Safety Act of 1995"; to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 56, Chapter 38, Part 1 and Title 62.